

117693

21014

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-204936

DATE: March 4, 1982

MATTER OF: Security Assistance Forces & Equipment  
Export Corporation

**DIGEST:**

1. A postaward challenge alleging restrictiveness of a brand name or equal specification is untimely under GAO Bid Protest Procedures.
2. An aluminum housing requirement for a light fixture which is listed under a brand name or equal specification is presumed to be material to the Government's needs and thus the agency properly rejected a proposal offering a light fixture with a plastic housing.
3. Where GAO determines that one reason for rejecting a proposal is proper, a protester's allegations addressing other issues are academic.

Security Assistance Forces & Equipment Export Corporation (SAFE) protests the award of a contract by the United States Army Contracting Agency to Praezisa Industrielektronik GmbH, (Praezisa) for 118 emergency exit light fixtures. The Army awarded the contract under solicitation No. DAJA37-81-R-0996. SAFE challenges the brand name or equal specification as overly restrictive. SAFE also believes that the contracting officer improperly determined its proposal to be technically unacceptable.

The protest is dismissed in part and denied in part.

The solicitation called for the submission of proposals for light fixtures which were brand name "Praezisa LSLDEE2FFU, NR. 90341," or equal. Five offerors submitted proposals, of which SAFE's was the lowest in price. Army evaluators, however, determined the fixture SAFE offered,

"TANN Synchronome ELU 68 Series Brightway 105," to be technically unacceptable because it lacked an aluminum housing, a function control, and did not meet the "IP 54" protection classification in that it was not shown to be dust- and splash-proof, all salient characteristics of the brand name which were listed in the solicitation. The evaluators also cited SAFE's failure to indicate whether the fixture it offered had received the approval of the Association of German Electrical Technicians. Thereafter, the Army awarded the contract to Praezisa which offered the brand name product at what the Army determined to be a fair and reasonable price.

SAFE argues that the solicitation was too restrictive in that some of the salient characteristics listed were unnecessary.

This post award challenge to the specifications, however, is untimely. Under our Bid Protest Procedures, an offeror must file a protest which is based on improprieties apparent in the solicitation before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1981). Therefore, we dismiss this portion of SAFE's protest.

SAFE next asserts that its fixture complied with the salient characteristics listed in the solicitation. We disagree. For example, the fixture SAFE offered has a plastic housing. The solicitation explicitly called for a light fixture with aluminum housing. Where, as in this case, a solicitation sets forth particular features of the brand name product under a brand name or equal specification, we presume those features to be material to the needs of the Government and thus technical conformance to the specification is mandatory. Nexus Incorporated, B-196593, April 15, 1980, 80-1 CPD 269; Parkson Corporation, B-187101, February 11, 1977, 77-1 CPD 103. Thus, we find that the Army properly found SAFE's proposal technically unacceptable on the basis of the aluminum housing requirement.

SAFE also challenges the Army's determination that its proposal was technically unacceptable on several other grounds. We need not, however, discuss these allegations. Where one reason for rejecting a proposal is proper, as we have determined here, a protester's allegations addressing other issues are academic. West Electronics, Inc., B-190173, February 10, 1978, 78-1 CPD 118.

The protest is dismissed in part and denied in part.

*Milton J. Jordan*  
for Comptroller General  
of the United States